IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

OP.No. 6560 of 2001(E)

PETITIONER:

SUSAMMA THOMAS, CHICK SEXER, REGIONAL POULTRY FARM, CHATHAMANGALAM, R.E.C. P.O., KOZHIKODE.

BY ADV. SRI.M.V.S.NAMBOOTHIRY,
SRI.R.VINOD.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF ANIMAL HUSBANDRY, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF ANIMAL HUSBANDRY, VIKAS BHAVAN, THIRUVANANTHAPURAM.**

3. **THE PRODUCTION MANAGER, CENTRAL HATCHERY, CHENGANNUR.**

4. **ADDITIONAL DIRECTOR, LIVESTOCK MANAGEMENT TRAINING CENTRE, KODAPPANAKUNNU, THIRUVANANTHAPURAM.**

5. **CHANDRA BABU, CHICK SEXER, REGIONAL POULTRY FARM, KOLLAM.**

BY ADV. SRI.M.BALAGOVINDAN FOR R5,
SRI.VINOD J.DEV,
GOVERNMENT PLEADER SRI. K.V. MANOJ FOR R1 TO R4.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 10738/2001 IN O.P. NO. 6560/2001

DISMISSED

13/06/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 23/09/1980 ISSUED BY THE R.3.

EXT.P.2: COPY OF THE ORDER DTD. 08/07/86 ISSUED BY THE R.2.

EXT.P.3: COPY OF THE G.O. (MS) NO. 109/98 AD DTD. 27/05/1998.

EXT.P.4: COPY OF THE CIRCULAR DTD. 21/12/1999 ISSUED BY THE ADMINISTRATIVE OFFICER.

EXT.P.5: COPY OF THE CALL LETTER DTD. 06/09/2000 ISSUED TO THE PETITIONER BY THE R.2.

EXT.P.6: COPY OF THE LETTER DTD. 20/09/2000 ISSUED TO THE PETITIONER BY THE R.2.

EXT.P.7: COPY OF THE CALL LETTER DTD. 18/01/1980 ISSUED BY THE PRODUCTION MANAGER TO ONE K.G. RAGHAVAN.

EXT.P.8: COPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT OF KERALA G.O. (P). NO. 101/93/AD DTD. 04/05/1993.

EXT.P.9: COPY OF THE RESULT OF PRACTICAL TEST CONDUCTED BY THE R.3. PUBLISHED ON 30/06/97.

EXT.P.10: COPY OF THE RESULT OF PRACTICAL TEST CONDUCTED BY THE R.3.

EXT.P.11: COPY OF THE REPRESENTATION DTD. 27/11/2000 SUBMITTED BY THE PETITIONER BEFORE THE R.2.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 6560 of 2001-E.

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Dated this the 13th day of June, 2007.

J U D G M E N T

The petitioner approached this Court challenging the promotion of the 5th respondent as Chick Sexing Expert/Junior Instructor. The petitioner was appointed as a Casual Chick Sexer on daily wages as per order dated 22-9-1980. She continued as such till 8-7-1986 and she was absorbed as per Ext.P2 order in the permanent establishment. As per Ext.P3 dated 27-5-1998 she was appointed as a Chick Sexer. The Director of the Animal Husbandry as per Ext.P4 circulated the proposal for filling up two posts of Chick Sexing Experts at Central Hatchery, Chengannur and one post of Junior Instructor at Live Stock Management Training Centre, Kudappanakunnu from among the qualified hands in the Animal Husbandry Department. The method of appointment and the qualifications prescribed as per the special rules have been quoted therein and the employees who are in the feeder category having the required qualifications were directed to submit their application through proper channel with all required details. It is averred that the petitioner had also forwarded her application. Ext.P5 is a true copy of the call letter issued to the applicants to appear for the practical test to be held on 22-9-2000.

Even though she was present on the appointed day it was informed that the test was postponed. According to the petitioner, without completing the formalities the respondents 1 and 2 took hasty steps to promote the 5th respondent as Chick Sexing Expert. Further it is contended that he is not having the accuracy of 98% required for promotion as specified in the special rules.

2. The respondents 1 and 2 have filed a detailed counter-affidavit wherein it has been pointed out that the 5th respondent was promoted as per Ext.R1(a) proceedings of the Director of Animal Husbandry. The said proceedings is dated 22-2-2001. The petitioner has not specifically challenged the said proceedings in this writ petition. Apart from that it is averred in the counter-affidavit that the qualification and method of appointment to the post of Chick Sexing Expert provide for appointment by promotion from the category of Livestock Inspector Grade I and in the absence of qualified hands under the said item from Livestock Inspector Grade II and in the absence of qualified hands from the above two categories from category VII(1) Chick Sexer. It is stated that there were five aspirants listed from among the above categories including the petitioner and in accordance with the seniority one K.B.Venugopal and S.Chandra Babu, the 5th respondent herein were Sl.Nos.1 and 2. The 5th respondent is the senior most who was appointed through the P.S.C. It is averred that he had completed training for a period of five

months as provided under the special rules on 13-4-1999 and he was an approved probationer also. It is, therefore, submitted that the promotion was made perfectly in accordance with the stipulations contained in the special rules. As regards the contention that a test should have been conducted, it is stated in para.4 that the proposal to conduct the test was dispensed with as the provisions of the special rules do not provide for conduct of any such test. It is also pointed out that the practical test earlier conducted were before the issuance of the special rules and after the framing of the special rules no test need be conducted. Ext.R1(b) is relied on to show that respondent No.5 is having accuracy of more than 98%.

3. Petitioner has not filed a reply-affidavit and the original petition has not been amended seeking to quash Ext.R1(a) specifically. It is evident from the averments that the respondents have not violated the provisions of special rules in promoting the 5th respondent who had already completed the training required and going by Ext.R1(b) his accuracy was more than 98% also. It is a case where a senior hand having required qualification and experience has been promoted to the post in question and the petitioner could claim promotion only as per the seniority and as per the turn available to her. The argument based on postponement of a practical test as per Ext.P5 is also not sustainable, as such a test is not one contemplated by special rules, going by the stand taken in the counter-affidavit. Hence the non-conduct of the

practical test is not illegal. The promotion depends upon the qualifications and method of appointment specified in the special rules. Both these are satisfied in this case and the 5th respondent who was appointed through PSC is senior to petitioner also. The petitioner was not entitled for any preferential claim also. In the absence of any reply to the counter-affidavit, the case pleaded by petitioner lacks merit. Ext.R1(a) has not been specifically challenged also. Petitioner is only serial No.5 and admittedly all the other four applicants are her seniors. Therefore, there is no violation of the provisions of the special rules and at any rate none of the legal rights of the petitioner are affected also. Hence this writ petition fails and the same is dismissed.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-